

Crest Color Incorporated and Graphic Communications Union, Local 51, GCIU, AFL-CIO. Case 2-CA-26135

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Graphic Communications Union, Local 51, GCIU, AFL-CIO (the Union), the General Counsel of the National Labor Relations Board issued a complaint on March 10, 1993, against Crest Color Incorporated (the Respondent), alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On August 31, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On September 3, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated May 3, 1993, notified the Respondent that unless an answer was received by May 13, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in New York, New York, has been engaged in the operation of a nonretail printing business. Annually, the Respondent purchases and receives products and goods valued in excess of \$50,000 directly from suppliers located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section

2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees in the pressrooms of the Respondent engaged as printing pressmen.

For many years the Union has been the designated exclusive collective-bargaining representative of the unit employees and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from March 3, 1989, to March 2, 1992. At all times material herein, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

On or about May 21, 1992, the Union and the Respondent reached complete agreement on terms and conditions of employment of unit employees to be incorporated in a collective-bargaining agreement. Since in or about June 1992, the Union has requested that the Respondent execute a written contract containing this agreement and since in or about June 1992, the Respondent has failed and refused to execute the agreement.

On or about April 13, 1992, the Respondent and the Union entered into a written agreement whereby the Respondent agreed to a payment schedule to cover past delinquencies owed to various funds administered by the Union for the benefit of inter alia unit employees. Since in or about June 1992, the Respondent has failed to make contributions to the funds pursuant to this agreement. The agreement relates to wages, hours, and other terms and conditions of employment of unit employees and contains mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

CONCLUSION OF LAW

By failing to execute the agreement with the Union and by failing to make contributions to the funds pursuant to the payment schedule, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order it to execute the agreement which it reached with the Union on or about May 21, 1992. We shall also order it to make the payments to the funds pursuant to its agreement with the Union reached on or about April 13, 1992.¹ Finally, we shall order the Respondent to make its employees whole for its failure to make the payments to the funds pursuant to its agreement with the Union reached on or about April 13, 1992, by reimbursing them for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1983).

ORDER

The National Labor Relations Board orders that the Respondent, Crest Color Incorporated, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failure and refusal to execute the agreement reached with the Union on or about May 21, 1992.

(b) Failure and refusal to make contributions owed to various funds on behalf of its employees pursuant to its agreement with the Union reached on or about April 13, 1992.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute the agreement reached with the Union on or about May 21, 1992.

(b) Make contributions owed to various funds on behalf of its employees pursuant to its agreement with the Union reached on or about April 13, 1992, and make its employees whole, with interest, for its failure to do so.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

¹ This shall include any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

(d) Post at its facility in New York, New York, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to execute the collective-bargaining agreement which we reached on or about May 21, 1992, with Graphic Communications Union, Local 51, GCIU, AFL-CIO, the exclusive representative of our employees in an appropriate unit of all employees in the pressrooms engaged as printing pressmen.

WE WILL NOT fail and refuse to make payments pursuant to an agreed payment schedule with the Union reached on or about April 13, 1992, to cover past delinquencies owed to various funds administered by the Union for the benefit of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL sign the collective-bargaining agreement which we reached with the Union on or about May 21, 1992.

WE WILL make the payments pursuant to the agreed payment schedule and we will make our employees whole, with interest, for any losses they sustained as a result of our failure to make these payments.

CREST COLOR INCORPORATED